

Decision _____

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

James L. Duncan,

Complainant,

vs.

Sonoma-Marín Area Rail Transit
District (SMART),

Defendant.

Case 21-06-011

ORDER EXTENDING STATUTORY DEADLINE**Summary**

This decision extends the statutory deadline of this proceeding to March 29, 2024.

1. Background

On June 7, 2021, James L. Duncan (Duncan) filed this complaint, which first appeared on the Commission's Daily Calendar on June 18, 2021. On June 29, 2021, the Commission served the *Instruction to Answer* to Duncan and Sonoma-Marín Area Rail Transit District (SMART). The *Instruction to Answer* preliminarily determined that this complaint is adjudicatory. On July 9, 2021, an

e-mail ruling granted SMART's request for an extension of time to file its Answer. SMART filed its Answer on September 14, 2021. On October 25, 2021, both Duncan and SMART filed prehearing conference (PHC) statements in this matter.

A PHC was held on November 1, 2021, to address the issues of law and fact, determine the need for hearing, set the schedule for resolving the matter, and address other matters as necessary. On December 13, 2021, a Scoping Memo and Ruling (Scoping Memo) was issued setting forth the issue of whether the Complaint should be dismissed. On December 21, 2021, Duncan filed comments on the Scoping Memo. SMART filed comments on December 22, 2021.

On January 25, 2022, SMART filed a Motion to Dismiss Duncan's Complaint (Motion to Dismiss). On February 25, 2021, Duncan filed an Opposition to the Motion to Dismiss (Opposition). On March 14, 2021, SMART replied to the Opposition. On March 16, 2021, the Motion to Dismiss was denied.

On June 22, 2022, Application (A.) 15-05-014 was consolidated with this proceeding. As a result of the consolidation, the schedule for this Complaint was suspended pending the resolution of a Petition for Modification (PFM) that was filed by the Commission's Rail Safety Division in A.15-05-014 on January 24, 2022.

On November 7, 2022, a subsequent PHC was conducted in this matter. A Scoping Memo has yet to be issued for the November 7, 2022, PHC. At the PHC, Duncan and SMART requested time to adequately prepare their cases in this matter.

2. Procedural Background on A.15-05-014

On May 14, 2015, the City of Santa Rosa, which is not a party in this the Complaint, filed A.15-05-014, which sought authorization from the Commission

for approval to construct an at-grade pedestrian and bicycle crossing over SMART railroad tracks at Jennings Avenue in the city of Santa Rosa. SMART was not an original party to that Application.

On September 20, 2016, the Commission issued Decision (D.) 16-09-002, which authorized the City of Santa Rosa's Application for the proposed at-grade crossing. That decision granted a period of 36 months for the construction of the proposed crossing.

On August 11, 2017, the Commission issued D.17-08-017 modifying D.16-09-002 and denied a request for rehearing. On April 19, 2019, the City of Santa Rosa filed a PFM of D.16-09-002 requesting a two-year extension of the time authorized to construct the Jennings crossing.

On September 17, 2019, the Commission issued D.19-10-002 granting another two-year extension of time to construct the Jennings crossing. On July 16, 2021, the City of Santa Rosa filed a second PFM of D.16-19-002 requesting an additional two-year extension of the authorization to construct the Jennings Avenue crossing. On October 8, 2021, the Commission issued D.21-10-003 extending the authorization granted in D.16-19-002 for an additional two years.

On January 24, 2022, the Commission's Rail Safety Division filed a PFM seeking to modify D.16-09-002 ~~and requested that the Jennings Avenue crossing be a grade-separated crossing rather than the at-grade crossing which was approved by the Commission.~~ On November 17, 2022, the Commission adopted D.22-11-025, denying the PFM. On November 21, 2022, an Email Ruling was issued which unconsolidated A.15-05-014 and C.21-06-011 into two separate proceedings.

Public Utilities (Pub. Util.) Code § 1701.2(i) provides that adjudicatory cases shall be resolved within 12 months of initiation unless the Commission

makes findings why that deadline cannot be met and issues an order extending the deadline.

Currently the deadline for completing this matter is December 13, 2022. An extension of time to file the Answer in this Complainant was granted at the request of the Defendant. The Answer was filed on September 14, 2021, and an initial PHC was scheduled as soon as practical after the Answer was filed. The extension resulted in a delay of the proceeding. The only issues set forth following the initial PHC were whether the matter should be dismissed. Additionally, this complaint was consolidated with A.15-05-014 and the procedural schedule in Case 21-06-001 was suspending pending the resolution of the PFM in A.15-05-014. Furthermore, the parties requested additional time in this matter due to the probability of an appeal in A.15-05-014, which may further delay the procedural schedule in this matter.

Although the Scoping Memo and Ruling for the November 7, 2022, PHC has not been released, it is anticipated that hearings, if needed, and opening and reply briefs will not be submitted until summer 2023. Following the submission of this matter, the Commission will need adequate time to address the many complicated issues presented in this matter. Considering that the procedural schedule was stayed in this matter and there are new issues that were added to the scope of this proceeding at the November 7, 2022 PHC, it is appropriate to extend the statutory deadline in this matter ~~by 12 months~~.

3. Waiver of Comment Period

Under Rule 14.6(c)(4) of the Commission's Rules of Practice and Procedure, the Commission may reduce or waive the period for public review and comment of proposed decisions extending the deadline for resolving a proceeding. Accordingly, the otherwise applicable period for public review and

comment on an extension order issued pursuant to Pub. Util. Code § 1701.5(a) is being waived.

4. Assignment of Proceeding

Commissioner Genevieve Shiroma is the assigned Commissioner and Gerald F. Kelly is the assigned ALJ in this proceeding.

Findings of Fact

1. The statutory deadline for resolving this proceeding is December 13, 2022.
2. An extension of the statutory deadline until March 29, 2024 is necessary to provide adequate time for the parties to prepare for their case and for the Commission to address the new complicated issues that were raised at the November 7, 2022, PHC that will be included in the amended Scoping Memo Ruling that will be issued later this year.

Conclusion of Law

1. Pursuant to the Commission's authority under Pub. Util. Code § 1701.2(i) the statutory deadline should be extended until March 29, 2024.

O R D E R

IT IS ORDERED that the statutory deadline in this proceeding is extended until March ~~24~~29, 2024.

This order is effective today.

Dated _____ 2022, at San Francisco, California.

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